1877
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 197.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

MARY L. GRIDLEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 28, 1877.

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INDEX.

	Original.	Print.
Summons	1	1
Complaint	2	1
First defense	5	2
Second defense	8	3
Order removing cause from State court to United States circuit court	11	4
Rule entered on removing cause	14	5
Third defense and further amendment to amended answer	15	5
Minutes of circuit court	18	6
Verdict with stipulation	20	6
Case and exceptions turned into a bill of exceptions	21	7
Order denying motion for new trial	36	15
Judgment	37	15
Appeal bond	39	16
Writ of error	44	17
Certificate of clerk	46	18
Citation	47	18
Appearance	48	19
Assignment of error	49	19

1 *Summons. For a money demand on contract.*

Supreme court.

MARY L. GRIDLEY, PLAINTIFF,
against
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendant.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 206 Broadway, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand dollars, with interest from the fifteenth day of August, one thousand eight hundred and seventy-five, besides the costs of this action.

Dated January 19th, 1876.

SEWELL AND PIERCE,
Plaintiff's Attorney.

2 Supreme court, county of Kings.

MARY L. GRIDLEY, PLAINTIFF,
vs.
THE NOTHWESTERN MUTUAL LIFE INSURance Company, defendant.

The plaintiff in the above-entitled action, by Sewell & Pierce, her attorneys, shows to the court:

I. The defendant is a corporation duly organized under the laws of the State of Wisconsin, for the pnrpose of insuring lives.

II. That on the 31st day of August, 1871, at the city of Milwaukee, in the said State of Wisconsin, the said defendant, in consideration of the quarterly cash premium of sixty-one $\frac{50}{100}$ dollars then paid by the said plaintiff to the said defendant, and of annual loan note, with interest, of one hundred and sixty-six $\frac{80}{100}$ dollars, then given by the said plaintiff to the said defendant, and of the quarterly payment of the like sum of sixty-one $\frac{50}{100}$ dollars in every quarter and of the giving of a like annual loan note of one hundred and sixty-six $\frac{80}{100}$ dollars ($166.80) in
3 every year, the said defendant, the said The Northwestern Mutual Life Insurance Company, made and delivered to the said plaintiff, the said Mary L. Gridley, its certain policy of insurance, whereby the said defendant insured the life of Fayette R. Gridley, the husband of the said plaintiff, in the sum of ten thousand dollars, for the benefit of his said wife, the said Mary L. Gridley, the plaintiff herein, and did therein and thereby further agree to pay the said sum of ten thousand dollars upon the death of said Fayette R. Gridley to the said plaintiff in sixty-days after due notice and proof of death of the said insured.

III. That the said Fayette R. Gridley died on the 13th day of August, 1875, at the city of Auburn, in the State of New York, and that his death was not occasioned by any of the causes or matters excepted in the said policy or in the application therefore.

IV. That the said deceased and the said Mary R. Gridley each duly performed all the conditions of the said contract of insurance on their part, and the said plaintiff more than sixty days before the commencement of this action, to wit, on or about the 28th day of August last past, gave to the said defendant due notice and proof of the death of the
4 said Fayette R. Gridley, which was duly accepted by said company.

V. That before the commencement of this action payment of said sum of ten thousand dollars was duly demanded from the said defendant by the said plaintiff, which was refused, and no part thereof has been paid.

Wherefore the said plaintiff demands judgement against the said defendant for the sum of ten thousand dollars, with interest on the same from the 15th day of August, 1875, and for the costs of this action.

SEWELL AND PIERCE,
Atty's for Pl'ff, 206 B'way, N. Y.

STATE OF NEW YORK,
City and County of New York, ss:

Mary L. Gridley, being duly sworn, says she is the plaintiff in this action. That the foregoing complaint is true of her own knowledge except as to the matters stated therein on information and belief, and as to those matters she believes it to be true.

MARY L. GRIDLEY.

Sworn to before me this 19th day of January, 1876.

ELEAZER MILLER,
Notary Public, New York Co.

5 Supreme court, Kings County.

MARY L. GRIDLEY, PLAINTIFF,
ag'st
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendants.

First defence.

The above-named defendant, answering the complaint herein, says, on information and belief, that prior to the issuing of the policy of insurance in said complaint mentioned, Fayette R. Gridley, the said husband of said plaintiff, on behalf of himself and said plaintiff, made an application in writing to said defendant for said policy of insurance, dated the 28th day of August, 1871, signed by said Fayette R. Gridley, for himself and said plaintiff, as applicants for said policy; that amongst other things, in answer to a question contained in said application, the said Fayette R. Gridley, on behalf of himself and said plaintiff, stated therein that neither his parents, uncles, aunts, brothers, or sisters had been afflicted with consumption, scrofula, insanity, ep'*li*lepsy, disease of the heart, or any other hereditary disease, except one brother who was
6 temporarily insane six years since, caused by domestic and financial trouble followed by hard drinking and excessive use of opium and morphine; that recovery followed reformed habits, and that there was, to said Fayette R. Gridley's knowledge, no hereditary taint of any kind on either side of the house, meaning on either his father's or mother's side.

And the defendant, further answering, says, on information and belief, that in and by said application it was declared by the said plaintiff and her

said husband that the answers to the questions therein contained were the applicant's own fair and true answers to said questions, and that in a by said application it was further agreed by said plaintiff and her said husband that said statements therein with said declaration should form the basis of the contract for assurance, and that any untrue or fraudulent answers, material to the risk, should vitiate the policy to be issued on such application and forfeit all payments made on such policy.

And the defendant further says, on information and belief, that in addition to the consideration in said complaint stated for said policy
7 of insurance, the same was made and issued also in consideration of the representations made in said application for the same, and it was, and is, expressly provided and stated in said policy, and the same was issued and accepted by the said plaintiff upon the express condition, amongst others that if any of the statements or declarations in the said application, and upon the faith of which said policy was issued, should be found in any material respect untrue, that said policy should be null and void.

And this defendant further says, on information and belief, that the said statements in said application were and are untrue in a material respect in this, to wit, that one Abraham Gridley, an uncle of said Fayette R. Gridley, became and was insane for a long period of time, to wit, for the space of a year or more preceding his death, an inmate of the Bloomingdale Asylum for insane persons in this State, and died therein, by committing suicide while insane, on or about the tenth day of November, 1850, and that on account of said untrue statement the said policy is null and void.

8 *Second defence.*

And for a further and separate defence the defendant says, on information and belief, that the application for said policy of insurance was made by said Fayette R. Gridley for the benefit of the plaintiff, his wife, in order to provide for her means of support after his death; that the premiums on said policy were paid by said Fayette R. Gridley; that for the consideration hereinbefore, and in said complaint mentioned, the defendant by said policy assured the life of said Fayette R. Gridley for the benefit of said plaintiff in the amount of ten thousand dollars for the term of his natural life; that in and by said policy it was provided, and the same was issued and accepted by the said plaintiff upon the express condition, that if the said Fayette R. Gridley should die in consequence of the violation or attempted violation of any law of any nation, state, or province, then the said policy should be null and void; that the said Fayette R. Gridley, intending to cheat and defraud said defendant, fraudulently cut short and destroyed his own natural life long before the same would other-
9 wise have ended, and feloniously committed suicide at Auburn, in the State of New York, in violation of the law of said State.

SALOMON & BURKE,
Defendant's Attorneys, No. 4 Wall St., N. Y.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Salomon, being duly sworn, says that he is one of the attorneys of the defendant above named; that the foregoing answer is true of his own knowledge except as to the matters stated on information and belief, and as to those he believes it to be true; that the reason this verification is not made by the defendant is that it is a non-resident corporation, having its principal place of business in Milwaukee, in the State of Wisconsin, and that none of its officers reside or are now within this State-

Deponent further says that he has no personal knowledge of any of the matters stated in the said answer, but that his information is derived from and his belief based upon correspondence had with the president of the said defendant and documents received from him in
10 relation to this action, which are now in deponent's possession.

EDWARD SALOMON.

Sworn to before me this 7th April, 1876.

RUDOLF DULON,
Notary Public, No. 4 Wall St., New York.

11 Supreme court of the State of New York, county of Kings.

MARY L. GRIDLEY, PLAINTIFF,
against
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendant.

At a special term, held at chambers, Brooklyn, May 11, 1876.

Present, Hon. C. E. Pratt, justice.

On reading and filing the petition of the above-named defendant in the above-entitled action, whereby it appears that it is a corporation created by and under the laws of the State of Wisconsin, having its principal place of business in Milwaukee, in the said State; that the plaintiff is a citizen of the State of New York; that the above-entitled action was commenced by the service of a summons and complaint on the ninth day of February, 1876; that this action is brought for the recovery of ten thousand dollars and interest, the amount of a policy of insurance
12 issued by the defendant in favor of the plaintiff on the life of one Fayette R. Gridley; that the matter in dispute exceeds the sum of five hundred dollars exclusive of costs, and that the term of said court commencing on the first Monday of May, 1876, is the first term of said court at which said cause could be tried, and that it has not yet been tried, and praying this court to proceed no further in this action pursuant to the provisions of the act of Congress in that behalf, approved March 3d, 1875; and said defendant having also made and filed with said petition this bond, with good and sufficient sureties for his entering at the next term of the circuit court of the United States for the eastern district of New York, on the first day of its next session, a copy of the record in said case, and for the payment of all costs which may be awarded if said circuit court shall hold that said cause was wrongfully or improperly removed thereto, and also for there appearing and entering special bail in said suit if special bail was originally requisite therein, as required by said act of Congress, it is ordered that this action be
13 removed to the said circuit court of the United States for the eastern district of New York and that this court proceed no further in said action.

C. E. PRATT, *J. S. C't.*

May 11, 1876.—G. G. H.

Filed May 11th, 1876.

14 *Rule removing cause to U. S. circuit court.*

United States circuit court, eastern district of New York.

MARY L. GRIDLEY
against
THE NORTHWESTERN MUTUAL LIFE INSURANCE Company.

JUNE 2, 1876.

On reading and filing certified copies of record and proceedings in the supreme court of the State of New York, for the county of Kings, and on motion of Salomon & Burke, defendant's attorney, it is ordered that this cause do proceed in this court in the same manner as if the said cause had orignally been brought in this court, and that the appearance of said defendant, The Northwestern Mutual Life Insurance Company, by Salomon & Burke, its attorneys, be and the same is hereby entered herein.

15 United States circuit court for the eastern district of New York.

MARY L. GRIDLEY, PLAINTIFF,
ag'st
THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, defendant.

Third defense.

And for a further separate partial defence, by way of setoff, the defendant says that said policy of insurance was also made, and therein recited as having been made, in consideration of the premium in advance, consisting of the quarterly cash premium of sixty-one $\frac{50}{100}$ dollars, to be paid at or before noon on or before the thirty-first day of August, November, February, and May, and of an annual loan-note, with interest, of one hundred and sixty $\frac{80}{100}$ dollars (to be given in every year) during the continuance of said policy; and that it was further provided in said policy that the balance of the year's premium, and all notes given for premiums, should be first deducted from the said sum assured
16 whenever the same should become payable, and that the said defendant only promised and agreed to pay the said sum assured whenever the same should become due and payable, after deducting therefrom the balance of the year's premium and all notes given for premiums.

And the defendant further says that in pursuance of said policy the said Fayette R. Gridley did execute and deliver to the defendant his four several promissory notes in part payment of annual premiums, as in said policy provided, each for the sum of one hundred and sixty-six $\frac{80}{100}$ dollars, with interest at the rate of seven per cent. per annum, said interest payable annually, said four several promissory notes bearing date respectively the thirty-first days of August, 1871, 1872, 1873, and 1874, and that there is due and unpaid upon said promissory notes the sum of five hundred and twelve $\frac{96}{100}$ dollars and interest thereon from the thirty-first day of August, 1874, which said amount so due and unpaid upon said promissory notes, with said interest, the defend-
17 ant claims to set off and deduct from the plaintiff's demand.

SALOMON & BURKE,
Def't's Att'ys.

(Endorsed:) Further amendment to amended answer. Filed December 6th, 1876.

At a stated term of the circuit court of the United States of
18 America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn on the 6th day of December, 1876.

Present, Hon. Charles L. Benedict, district judge.

MARY L. GRIDLEY, PLAINTIFF,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendant.

Cause called. Answer ready.

Appearances: Sewell and Pierce, for plaintiff; Salomon & Burke, for defendant.

Jury empanelled as follows and sworn:

Joseph Norwood.	H. B. Griffing.
Walter M. Aikman.	Wm. H. Wilkeyson.
Charles C. Betts.	George W. Uhler.
Henry D. Polhemus.	A. S. Wheeler.
J. W. Ledwich.	E. D. Griswold.
Isaac T. Swezey.	Austin W. Otis.

19 Mr. Salomon opens for defense, claiming the affirmative, and offers in evidence policy of insurance.

Harvey M. Munsell, called and sworn for defendants and cross-examined by Mr. Sewell.

Mr. Salomon offers in evidence original application for insurance.

James Gridley, called and sworn for defendant and cross-examined by Mr. Sewell.

Austin W. Otis, one of the jurors, excused, attorneys for respective parties consenting to continue trial of cause with 11 jurors.

Deposition of Charles H. Nichols, read on behalf of defendant by its attorney, Wm. H. McDonald, called & sworn for defendant.

Defendants rest.

Mr. Sewell opens for plaintiff.

Joseph C. Hutchinson, called & sworn for plaintiff.

Plaintiff rest.

20 Judge charges the jury to find verdict for plaintiff for sum named.

Jury finds verdict for plaintiff for $10,218.07 in accordance with direction of court.

Stay of thirty days granted defendants (on their motion) to make a case and turn it in a bill of exceptions if required.

In the circuit court of the United States for the eastern district of New York.

MARY L. GRIDLEY, PLAINTIFF,
vs.
THE NORTHWESTERN MUTUAL INSURANCE Company, defendant.

It is stipulated that the verdict herein be for the sum of ten thousand

one hundred and seventy-nine $\frac{51}{100}$ (10,179.51) dollars, and that the record may be amended accordingly.

Dated New York, January 31st, 1877.

SEWELL AND PIERCE,
Pl'ff's Att'ys.

Filed February 1st, 1877.

21 United States circuit court for the eastern district of New York.

MARY L. GRIDLEY, PLAINTIFF,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendants.

The issues in the above-entitled action came on for trial before the honorable Charles L. Benedict, one of the justices of this court, at the term of said court held in the city of Brooklyn on the 6th day of December, 1876.

A jury was duly called and sworn, and thereupon the defendant, by its counsel, opened the case to the jury, and then and there, to maintain the issues upon its part, called as a witness HARVEY MUNSELL, who, having been duly sworn, testified as follows:

I reside in New York. I am the general agent of the defendant.
22 I know Fayette R. Gridley. I have seen him write. I am familiar with his handwriting. The signature to this paper (the application for insurance hereinafter mentioned) is in his handwriting, in my opinion. I should also say that the body of the instrument (I mean what is filled up above the names) is in the handwriting of Mr. Gridley.

And, on cross-examination, the witness testifies as follows:

I have seen Mr. Gridley write several times in my office. I have seen him sign loan notes for part of his premiums. He has also written me letters. I did not see him write these letters. I have seen him write an application for an insurance company other than this one. From my observation of his handwriting, I think I would be able to swear when I saw his handwriting on another paper that it was his. I think I would. I am a pretty good judge. I hesitated about the body of
23 this writing, because it is a little different. It is not quite so bold and clean. Some letters are entirely different, some are not. I do not know that I am an expert judge of handwriting. I write a great many letters and receive a great many. I could not swear positively that the body of this instrument is in the same handwriting as the signatures. I am nearly positive that the signature is in his handwriting. I am not so positive as to the body of the instrument. I was well acquainted with him, and I have known him a year and a half or two years before his death. I saw him write an application for insurance in my office in 1874, when he tried to insure his life for a large amount.

Defendant's counsel thereupon offered and read in evidence the following application:

Application to the Northwestern Mutual Life Insurance Company.

An answer to each of the following questions is required from persons proposing to effect assurance in this company, which answers form the basis of the contract.

1. Name at full length of the person for whose benefit the assurance is effected. — Mary L. Gridley. Residence, St. Paul, Minn. Relationship to person to be assured. Wife.

2. Name at full length of the person whose life is to be assured. — Fayette R. Gridley.

Residence, St. Paul, county of Ramsey, State of Minnesota. Post office address. Same.
Occupation. Jeweler. What occupation has the person been previously engaged in & present emp.? Hotel keeping, commission. Has health suffered therefrom? No.

3. Are you now assured in this company? If so, what is the number of the policy and for what amount? — No.

4. Place and date of birth? Alexander, Wyoming Co., New York.

Day.	Month	Year.	Age nearest birthday.
15	May.	1825.	46

5. Is the person whose life is to be assured married or single? — Married.

6. A. Has the person resided out of the United States?
B. If so, where, and for what period? — A. No. B.

7. Has the person been vaccinated? Yes. — Has the person had the small pox? No.

8. A. Are the person's parents living; if so, what are their ages and state of health?
B. If dead, at what ages and of what diseases did they die?

	Ages.	State of health, if living.	B. Age at death.	B. Cause of death.
Father. Dead.			75	Mechanical injury
Mother. Dead.			73	Old age.

	Whole No.	No. Living.	Ages of living.	State of their health.	No. Dead.	Ages at death.	Cause of death.
9. How many brothers has the person had?	5	4		Good.	1	About 36	Hard drinking followed by delirium and suicide.
How many sisters?	5	4		Good.	1	Infancy.	

10. A. Have the person's parents, uncles, aunts, brothers, or sisters been afflicted with consumption, scrofula, insanity, epilepsy, disease of the heart, or any other hereditary disease.	A. No. Except one brother temporarily insane six years since. Causes, domestic & financial trouble, followed by hard drinking & excessive use of opium & morphine. Recovery followed reformed habits. No hereditary taint of any kind in family on either side of house to my knowledge.
B. Have the person's ancestors generally reached old age?	B. Yes. Ages of grandparents. About. P. G. F. 84. P. G. M. 83. M. G. F. Don't know. Died of fever. M. G. M. Old. Don't know exact age.
11. Has the person ever had any of the following diseases or any symptoms thereof?	No.
Spitting blood, bronchitis, cancer, consumption, liver complaint, rheumatism, asthma, rupture, fistula, dropsy, insanity, paralysis, apoplexy, gout, fits, piles, bilious colic, palpitation or diseases of the heart, of the urinary organs, or of any vital part.	No; except very slight rupture near loins.
If the person has had one or more of these diseases, please state particularly which, when, how severe, and whether fully recovered, and answer "No as to all the rest."	No.
12. Is the person subject to dyspepsia, dysentery or diarrhœa?	No.
13. Has the person ever had an habitual cough?	No.
14. Is the person now subject to or affected by any disease or weakness, or has he had any severe disease, or received any serious injury other than those stated in the foregoing answers? If so, please state the particulars of the same, fully, prefixed by the words "none except."—	No.
15. Are the brain, the nervous and muscular systems, the lungs, heart, abdominal and urinary organs in healthy state?	Yes.
16. A. Are the person's habits of life correct and temperate?	Yes; drink only water.
B. Have they always been so?	Yes. Never have used intoxicating liquors.

17. Name and residence of person's usual medical attendant.	Have none. Refer for any information to Dr. J. C. Dixon, Attica, Ind.
18. Name and residence of an intimate friend, to be referred to for similar information?	Have only been in St. Paul a short time, therefore refer to Richard Wathaw, # 339 West 18 st., N. Y.
19. Amount of policy, $10,000. Kind of policy. Ord. life. No. of payments.	For life. Annual, semi-annual, or quarterly, cash and note, or all cash. Cash and note.
20. A. Is the person's life now assured; and, if so, for how much and in what co.? *B. Has the person ever been declined by any company? If so, why? C. Has any physician ever given an unfavorable opinion of the person's life?	A. Yes. 22,000—Charter Oak of Hartford, Conn..... 15,000 B. No.* } Eclectic, New York..... 6,000 C. No. } New York Life..... 2,000

21. Has the person read and assented to the following agreement? Yes.

It is hereby declared that the above are the applicant's own fair and true answers to the foregoing questions, and that the person is not, and will not become, habitually intemperate, or addicted to the use of opium; and it is hereby agreed, by the undersigned, that these statements, with this declaration, shall form the basis of the contract for assurance, and that any untrue or fraudulent answers, any suppression of facts in regard to the person's health, habits or circumstances, material to the risk, or neglect to pay the premium on or before the day it becomes due, shall vitiate the policy, and forfeit all payments made thereon. Such failure to pay, however, shall not forfeit the amount secured by previous payments on a non-forfeiting policy.

(Husband may sign for wife and his own name, as follows:)

JANE DOE,
By JOHN DOE.
JOHN DOE.

MARY L. GRIDLEY,
By F. R. GRIDLEY.
FAYETTE R. GRIDLEY.

Dated this 28 day of Aug., 1871.
[Northwestern Mutual Life Insurance Co., Aug. 31, 1871.]
(On left margin:) Approved. Lunk. Office medical examiner.
(On right margin:) If applicant is a married woman ask: Is her husband insured? Is he insurable? [B] Has he ever applied and been declined?

* Was rejected by Phœnix of Hartford (cause assigned "Double hernia"), on my own statement. Have been examined by three physicians in St. Paul, who pronounced it as stated above, # 11, or "no hernia at all." Rejection by said company is being reconsidered. Have been since accepted by Charter Oak.

25 Thereupon the defendant's counsel offered and read in evidence the policy of insurance upon which this action was brought, as follows, to wit:

26 63264.] Amount, $10,000.00. Premium, $412.80. [46

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

By this policy of assurance, in consideration of the representations made in the application therefor, and of the premium in advance, as herein stipulated, consisting of the quarterly cash premium of sixty one and $\frac{50}{100}$ dollars, to be paid at or before noon on or before the 31st day of August, November, February, & May, and of an annual loan note with interest of one hundred and sixty-six and $\frac{80}{100}$ dollars (to be given in every year) during the continuance of this policy, doth assure the life of Fayette R. Gridley, a jeweler of St. Paul, in the county of Ramsey, State of Minnesota, for the benefit of Mary L. Gridley, his wife, in the amount of ten thousand dollars, for the term of his natural life.

And the said company doth hereby promise and agree to pay the said sum assured, at its office, to the said beneficiary or her executors, administrators, or assigns, in sixty days after due notice and proof of death of the said person whose life is hereby assured (the balance of the year's premium and all notes given for premiums, if any, being first deducted therefrom). In case of the death of the said beneficiary, before the death of the person whose life is assured, the amount of the assurance shall be payable at maturity to the heirs or assigns of the said person whose life is assured.

At each distribution of the surplus after two years from the date hereof, a due proportion of such surplus on each and every year's business, during the continuance of this policy, will be returned to the said assured.

And the said company further promises and agrees that if, after the full amount of two or more annual premiums (including any premium note or notes with the interest thereon) shall have been paid in cash, default shall be made in the payment of any premium or interest on the day it shall become due, it will issue a paid-up policy for a sum equal to the full amount of the ordinary annual premiums so paid, provided written application be made therefor, and this policy and all interest therein be surrendered, within three months from the date of such default.

This policy is issued and accepted by the parties in interest on the following express conditions:

1st. The person whose life is assured is permitted to travel by the usual routes to or from California, or to or from any portion of the western hemisphere north of the tropic of Cancer, or to or from any portion of Europe, and to reside within said limits north of the tropic aforesaid.

2d. If the said person shall pass beyond the aforesaid limits, or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances, or as engineer or fireman of any locomotive engine; or be employed in any capacity on the trains of a railroad, excepting as passenger or sleeping car conductor, mail agent, express messenger, or baggage master, or in ocean navigation, excepting as master, mate, or pilot of first-class steam or sailing vessels plying between ports within the limits of the tropics before mentioned; or shall enter or be engaged in any military or naval service whatsoever (except in time of peace), or shall undertake an aerial voy-

age, without in each or either of the foregoing cases having first obtained the written consent of the company, or shall die in consequence of a duel, or of the violation or attempted violation of any law of any nation, state, or province, or shall become so far intemperate as to impair health or induce delirium tremens, or if any of the statements or declarations in the application for this policy and upon the faith of which it is issued shall be found in any material respect untrue, then, and in every such case, this policy shall be null and void.

3d. If the said premiums or the interest upon any note given for premiums shall not be paid on or before the days above mentioned for the payment thereof, then, and in every such case, the company shall not be liable for the payment of the whole sum assured, but only for such part thereof as is expressly stipulated above, and the remainder shall cease and determine; and that no premium, or interest upon any note given for premiums, on this policy shall be considered paid unless a receipt shall be given therefor, signed by the president or secretary.

4th. In every case where this policy shall cease or become null and void, all payments thereon shall be forfeited to the company.

5th. If the said person whose life is hereby assured shall become in any sense an inebriate, the company shall have the right to declare this policy cancelled, and shall be absolved from all liability under it on paying or tendering payment to the holder thereof the amount of the "surrender value" at the time of such payment or tender, as determined by the company's tables.

6th. If this policy is assigned or held as security, written notice shall be given to this company, and due proof of interest produced with proofs of death.

7th. This policy shall not take effect and become binding on the company until the premium shall be actually paid, during the lifetime of the person whose life is assured, to the company or to some person authorized to receive it, who shall countersign the policy on receipt of the premium.

In witness whereof the said The Northwestern Mutual Life Insurance Company at its office in Milwaukee, Wisconsin, has by its president and secretary signed and delivered this contract this thirty-first day of August, one thousand eight hundred and seventy-one.

JOHN H. VAN DYKE,
President.

AUG. GAYLORD,
Secretary.

27 Thereupon the defendant's counsel called as a witness JULIUS GRIDLEY, who after having been sworn testified as follows:

I reside in Brooklyn; I am a commission merchant; I have resided in Brooklyn now thirteen years. I knew Fayette R. Gridley during his life; he lived in various places; he came originally from Genessee County, New York, I think; he was my cousin; my father and his father were brothers; my father's name was Abraham Gridley; he lived at Auburn, in this State; he died, I think, in November, 1850, at the Bloomingdale Asylum for Insane, in New York; he was confined in the Bloomingdale Asylum from some time in early spring until November of that year; I occasionally visited him during these months that he was there; I think he was insane; I could not say from personal knowledge when the first symptoms of insanity were shown in him; it occurred in Auburn; I live in New York. His business in Auburn, while he lived there, was agent of the Auburn State Prison; I did see him oc-

casionally during the years 1847 and 1848; in 1849 he was brought down to New York to my brother-in-law; he was insane at that time; I should think this was in the spring of 1849; am pretty certain it was; I took him to the Bloomingdale Asylum. The physician in charge there was Dr. Nichols.

And on cross-examination said witness testified:

I did not know Fayette R. Gridley during his entire life. I never saw him until about sixteen or eighteen years ago. I first saw him in New York. He had been living somewhere in the West. Up to that time there had been no communication between our respective families. After that time I know of no communication between our respective families until he came here to reside, which was about twelve or thirteen years ago. He was not, so far as I know, residing here at the time of my father's death. I could not say where he was then residing. I did not communicate to Fayette R. Gridley the circumstances connected with my father's death. I do not know whether he ever heard of them. I am not aware that the matter of the insanity of my father was communicated to Fayette R. Gridley or his family. I never communicated it. So far as I know the matter was not publicly spoken of at all. There was not anything about it in the newspapers so far as I know. The insanity of my father manifested itself by his laboring under the idea that he was ruining everybody. He was not violent at all. I do not know anything of the causes that brought on this insanity. My father before this attack of insanity was agent of the Auburn State Prison. Before that I think he was a State senator. Before that he was clerk of the Auburn State Prison for some years. He was a man of some education, a man of intelligence, I think. After his first attack he got entirely well. After that he was a clerk in the Sing Sing Prison.

The defendant's counsel thereupon read in evidence the deposition of CHARLES H. NICHOLS, taken at the city of Washington, in the District of Columbia, on the 25th day of September, 1876, wherein said witness testified as follows:

My name is Charles H. Nichols. I am fifty-five years of age, and in charge of the Government Hospital for the Insane in the District of Columbia, where I reside. During the year 1850 I was living at Bloomingdale Asylum, New York City, of which I was the chief medical officer. I was so employed at that asylum from March, 1849, to June, 1852. It was an asylum for the insane. Abraham Gridley was admitted into the Bloomingdale Asylum on the 28th March, 1850, and remained in the institution, under my care, until the 10th day of November, 1850, when he died. He was admitted into the asylum because he was suffering from insanity. He continued to suffer from insanity during the period he remained in said asylum. His insanity was that form commonly called melancholia. After he was brought to the asylum from the Sing-Sing Prison, of which he was clerk, he fancied that he had kept the books wrong, and that financial embarrassments would arise, and that the prisoners would escape and come down to the city and sack it. He had declined to eat for some time before his admission to the asylum on the ground that his eating would impoverish the State. While in the institution he was unwilling to eat because food contributed to his excrement, which he thought was poisonous. He also fancied that his breath was poisonous, and contaminated every one who took it. He labored under the delusions of the general character of those I have instanced until his death. He was

not violent nor destructive nor incoherent, but the delusions were complete and governed his actions entirely.

I have been very nearly thirty years in charge of or attending specially insane persons. I am able to state the tests and symptoms
32 as to this patient from notes of the case made by myself at the time of his admission at the Bloomingdale Asylum and while he was under treatment. These notes have been in my possession since that time. I have referred to them to refresh my memory in regard to the case.

I think Mr. Gridley's insanity was caused by overwork and bodily ill-health. My reasons for this is the history given: that he became insane two years before his admission to the Bloomingdale Asylum, while in the capacity of agent for the Auburn Prison—from overexertion in discharging the duties of that position; that he had so far recovered as to be able to discharge all the duties of clerk in the Sing Sing Prison, when he relapsed, his relapse having been attributed to the fright from a fire that occurred in that institution. While in the institution under my care, his conversations and declarations were calculated to corroborate the truth of the history that had been given of his case. His bodily health was stated to have been poor some time prior to his
33 admission, and while in the institution he suffered from dyspepsia and ulceration of the bowels and hydrocele, which affections were chronic, and justified the declaration in his previous history that his health had been bad. And the connection between the bodily diseases from which he suffered and the insane delusions rendered it highly probable that his ill-health was, in part at least, the cause of his insanity. Prior to his admission to the Bloomingdale Asylum in March, 1850, I had no acquaintance or knowledge of Abraham Gridley.

And in answer to cross-interrogatories, said witness testified as follows:

I have refreshed my recollection by notes of my own, made at the time Mr. Gridley was under my care. I have also read the transcript of the Bloomingdale Asylum, which however contained nothing material not down on my own notes.

It was agreed between the counsel of the respective parties, and so stated to the court and jury, that the amount due upon the policy
34 of insurance, after deducting the premium notes in the amended answer mentioned, was the sum of $10,179\frac{51}{100}$.

The defendant's counsel thereupon rested the case.

The foregoing was all the testimony in the case, and no evidence being offered on the part of the plaintiff, the defendant's counsel requested the court to direct the jury to find a verdict for the defendants, which request the court then and there declined, and the defendant's counsel did then and there except to such refusal of the court.

Thereupon the plaintiff's counsel requested the court to direct the jury to find a verdict for the plaintiff, whereupon the court directed the jury to find a verdict for the plaintiff for the amount of $10,179\frac{51}{100}$, to which direction of the court the defendant's counsel did then and there except. Whereupon the jury rendered a verdict for the plaintiff for the sum of $10,179\frac{51}{100}$.

And because the foregoing does not appear of record, this case and exceptions have been made with leave of the court to turn the same into a bill of exceptions.

35 The foregoing "case and exceptions" having been duly settled, and the motion for a new trial made thereon having been overruled

the same are hereby turned into the "bill of exceptions" to be filed in this case, and as such bill of exceptions I have hereunto set my hand and seal this second day of February, 1877.

[L. S.] CHAS. L. BENEDICT.

36 In the circuit court of the United States for the eastern district of New York.

MARY L. GRIDLEY, PLAINTIFF,
against
THE NORTHWESTERN MUTUAL LIFE INSURance Company, defendant.

And now comes the said defendant, by Salomon & Burke, its attorneys, and moves the court that the said verdict be set aside and for a new trial herein upon a case and exceptions made and settled herein; and after hearing Edward Salomon, esqr., on behalf of said defendant, and Robert Sewell, esqr., on behalf of said plaintiff, upon said motion, the court being now sufficiently advised concerning the same, it is ordered that said motion be and the same is hereby denied.

And it is further ordered that said "case and exceptions" be, and the same is hereby, turned into and shall stand for and be the "bill of exceptions" to be filed herein and made a part of the record of this action.

February 2nd, 1877.

CHAS. L. BENEDICT.

(Endorsed:) Order denying motion for a new trial and turning "case on exceptions" into a "bill of exceptions." Filed & entered this 2nd day of February, 1877.

37 And now, at this day, to wit, on the first Wednesday of December, 1876, before Charles L. Benedict, esqr., one of the circuit judges of the United States, come as well the within named Mary L. Gridley, by her attorneys within mentioned, as the within named The Northwestern Life Insurance Company, by its attorneys within named, and the jurors of the jury whereof mention is within made being called likewise come, and being chosen, tried, an' sworn, and the said judge having heard the testimony of the witnesses duly called by the respective parties within named, and having considered the same, and having directed that the plaintiff recover of the defendant the sum of $10,179\frac{51}{100}$:

Therefore, it is considered that the said plaintiff recover against the said defendant the sum of ten thousand one hundred seventy-nine and $\frac{51}{100}$ dollars, and also four hundred nine and $\frac{65}{100}$ dollars, interest to date, and also fifty-four and $\frac{20}{100}$ dollars, costs and charges by her about her suit in this behalf expended, adjudged by the court now here to the said plaintiff, and which said principal, interest, costs, and charges in the whole amount to ten thousand six hundred and forty-three and

38 $\frac{36}{100}$ ($10,643\frac{36}{100}$) dollars, and the said defendant in mercy, &c.

Judgment signed this 3rd day of July, 1877.

B. LINCOLN BENEDICT, *Clerk.*

39 Circuit court of the United States for the eastern district of New York.

MARY L. GRIDLEY
vs.
THE NORTHWESTERN MUTUAL LIFE INSURance Company.

Know all men by these presents that the Northwestern Mutual Life Insurance Company, of the city of Milwaukee, in the State of Wisconsin, as principal, and Manly A. Ruland, of the city of Brooklyn, in the county of Kings and State of New York, and Samuel S. Hepworth, of Yonkers, in the county of Westchester and State of New York, as sureties, are held and firmly bound unto Mary L. Gridley, of the city of Brooklyn, county of Kings, and State of New York, in the sum of twenty thousand dollars, to be paid to the said Mary L. Gridley, her executors and administrators, for which payment, well and truly to be made, the said The Northwestern Mutual Life Insurance Company binds itself and its successors, and the said Manly A. Ruland and Samuel S. Hepworth bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents. In witness whereof the said
40 The Northwestern Mutual Life Insurance Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its president and attested by its secretary, and the said Manly A. Ruland and Samuel S. Hepworth have hereunto set their hands and seals this seventh day of July, one thousand eight hundred and seventy-seven.

Whereas the above-named principal defendant in the action above entitled has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the said action against said defendant by the circuit court of the United for the eastern district of New York, on the third day of July, 1877, for the sum of ten thousand six hundred and forty-three $\frac{36}{100}$ dollars.

Now, therefore, the condition of this obligation is such that if the above bounden the Northwestern Mutual Life Insurance Company shall prosecute a writ of error to effect and answer all damages and costs and just damages for delay, if it fail to make its plea good, then this obligation shall be void, otherwise it shall remain in full force and virtue.

[CORPORATE SEAL.] H. L. PALMER, *Pres't.*
WILLARD MERRILL, *Sec'y.*

Sealed & delivered in the presence of—as to signatures of H. L. Palmer and Willard Merrill—
WM. H. FARNHAM.
F. BLOODGOOD.

41 M. A. RULAND. [L. S.]
S. S. HEPWORTH. [L. S.]

As to Manley A. Ruland and Samuel S. Hepworth—
RUDOLF DULON.

STATE OF WISCONSIN,
Eastern District of Wisconsin, ss:

On this seventh day of July, one thousand eight hundred and seventy-seven, before me personally came Willard Merrill, secretary of the Northwestern Mutual Life Insurance Company of the city of Milwaukee, with whom I am personally acquainted, who, being by me duly

sworn, said that he resided in the city of Milwaukee; that he was the secretary of the Northwestern Mutual Life Insurance Company of the city of Milwaukee; that he knew the corporate seal of the said company; that the seal affixed to the above instruments was such corporate seal; that it was so affixed by the order of the board of trustees of the said company; and that he signed his name thereto by the like order as secretary of said company; and the said Willard Merrill further said that he was acquainted with Henry L. Palmer and knew him to be president of said company; that the signature of the said Henry L. Palmer subscribed to the said instrument was in the genuine handwriting
42 of the said Henry L. Palmer and was thereto subscribed by the like order of the said board of trustees and in the presence of him the said Willard Merrill.

WILLARD MERRILL.

Sworn to before me this 7th day of July, 1877.

F. BLOODGOOD,
Commissioner Circuit Court U. S. E. Dist. Wisc., Milwaukee, Wisc.

UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, ss:

On this eleventh day of July, 1877, before me personally came Manly A. Ruland and Samuel S. Hepworth, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same.

[L. S.] RUDOLF DULON,
Notary Public, No. 4 Wall st., New York.

43 UNITED STATES OF AMERICA,
Southern District of New York, City and County of New York, ss:

Manly A. Ruland, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of twenty thousand dollars over and above all his debts and liabilities.

M. A. RULAND.

Sworn to before me this eleventh day of July, 1877.

[L. S.] RUDOLF DULON,
Notary Public, Kings County, N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, City & County of New York, ss:

Samuel S. Hepworth, being duly sworn, says that he is a resident and freeholder within this State, and is worth the sum of twenty thousand dollars over and above all his debts and liabilities.

S. S. HEPWORTH.

Sworn to before me this eleventh day of July, 1877.

[L. S.] RUDOLF DULON,
Notary Public, Kings Co., N. Y.

(Endorsed:) Appeal bond. Filed July 13th, 1877.

Approved July 13th, 1877.

CHAS. L. BENEDICT.

44 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States for the eastern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said circuit court, before you, or some of you, between Mary L. Gridley, plaintiff, and the Northwestern Mutual Life Insurance Company, defendant, a manifest error hath happened to the great damage of the said The Northwestern Mutual Life Insurance Company as is said and as appears by its complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said
45 place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the hundred and second.

[L. S.] B. LINCOLN BENEDICT,
Clerk of the Circuit Court of the United States of America for the Eastern District of New York in the Second Circuit.

(Endorsed:) Writ of error. Filed July 13th, 1877.

46 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-five inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Mary L. Gridley, respondent, vs. The Northwestern Mutual Life Insurance Company, plaintiffs in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city at Brooklyn, in the eastern district of New York, in the second circuit, this twenty-fourth day of September, A. D. 1877, and of the Independence of the said United States the 102nd.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

47 UNITED STATES OF AMERICA, *ss:*

To Mary L. Gridley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and seventy-seven, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of New York, wherein the Northwestern Mutual Life Insurance Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this thirteenth day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] CHAS. L. BENEDICT.

48 (Indorsed:) U. S. Supreme Court. The Northwestern Mutual Life Insurance Company, pl'ff in error, vs. Mary L. Gridley, def't in error. Citation. Filed July 13th, 1877. B. L. Benedict, clerk. Salomon & Burke, att'ys for pl'ff in error. No. 4 Wall st., N. Y.

Due & timely service of the within is hereby admitted.
New York, July 13, 1877.

SEWELL & PIERCE,
Def't's Att'ys.

49 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-seven.

THE NORTHWESTERN MUTUAL LIFE INSURANCE Company, plaintiffs in error,
vs.
MARY L. GRIDLEY, DEFENDANT IN ERROR.

Afterwards, to wit, on the second Monday of October in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, come the said The Northwestern Mutual Life Insurance Company, by Edward Salomon their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the Hon. Charles L. Benedict, the judge before whom the said action was tried, erred in refusing to direct the jury to find a verdict for the said The Northwestern Mutual Life Insurance Company, as is in the bill of exceptions herein set forth, and that said judge also erred in directing the jury to find a verdict for the said Mary L.
50 Gridley, as is in said bill of exceptions set forth, and that said judge also erred in afterwards refusing to set aside said verdict and to grant a new trial in said action upon the record thereof.

And the said The Northwestern Mutual Life Insurance Company pray that the judgment aforesaid may be reversed, annulled, and otherwise held for naught, and that they be restored to all things which they have lost by occasion of said judgment.

EDWARD SALOMON,
Attorney for Plaintiffs in Error, No. 4 Wall street, N. Y. City.

51 (Indorsed:) U. S. Supreme Court. The Northwestern Mutual Life Insurance Company, pl'ffs in error, vs. Mary L. Gridley, def't in error. Assignment of errors. Edward Salomon, att'y for pl'ffs in error, No. 4 Wall st., N. Y.

Due & timely service of a copy of the within assignment of errors is hereby admitted.
Dated N. Y., August 28, 1877.

SEWELL & PIERCE,
Att'ys for Def't. in Error.

(Indorsed:) U. S. Supreme Court. Mary L. Gridley, respondents, vs. The Northwestern Mutual Life Insurance Company, plaintiffs in error. Record on writ of error.

(Indorsement on cover:) No. 197. The Northwestern Mutual Life Insurance Company, plaintiff in error, vs. Mary L. Gridley. E. New York, C. C. U. S. Filed 28th September, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 197.

The Northwestern Mutual Life Insurance Company,

Plaintiff in Error,

vs.

Mary L. Gridley,

Defendant in Error.

Brief for Plaintiff in Error.

EDWARD SALOMON,

Attorney for Plaintiff in Error,

115 Broadway, N. Y. City.

NEW YORK:

Supreme Court of the U. S. 1

No. 197.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Plaintiff in Error,

vs. 2

MARY L. GRIDLEY,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case. 3

In August, 1871, the plaintiff in error issued to the defendant in error, Mary L. Gridley, wife of Fayette R. Gridley, a life insurance policy, insuring his life for her benefit for the sum of ten thousand dollars. The policy states that it was issued "in consideration of the representations made in the application therefor" and of the premium, &c., and also states that "*if any of the statements or declarations in the application for this policy and upon the faith of which it is issued, shall be found in any material respect untrue, then * * * * this policy shall be null and void.*"— (*Printed Record*, pp. 11 and 12.) 4

The application for the policy was made and signed by Fayette R. Gridley, on behalf of himself

5 and his wife, and was headed as follows: "An answer to each of the following questions is required from persons proposing to effect assurance in this company, which answers form the basis of this contract," and it concluded with the following statement: "it is hereby declared that the above are the applicant's own, fair and true answers to the foregoing questions * * * * and it is hereby agreed by the undersigned, that these statements with this declaration, shall form the basis of the contract for assurance, and that any untrue or
6 fraudulent answers, any suppression of facts in regard to the person's health, habits or circumstances material to the risk * * * * shall vitiate the policy and forfeit all payments made thereon." (*Printed Record*, pp. 8 and 10.)

The application contained, among others, the following questions:

"*Have the person's* (whose life is to be assured) *parents, uncles, aunts, brothers or sisters, been afflicted with consumption, scrofula, insanity,*
7 *epilepsy, disease of the heart, or any other hereditary disease?*"

To which the applicant made the following answer:

"*No; except one brother, temporarily insane six years since. Causes, domestic and financial trouble, followed by hard drinking and excessive use of opium and morphine. Recovery followed reformed habits. No hereditary taint of any kind in family on either side of house, to my knowledge.*" (*Printed Record*, p. 9.)

8 The action below was brought to recover on this policy, and the principal defense was that the above answer in the application was untrue in a material respect, in this, that Abraham Gridley, an uncle of Fayette R. Gridley, became and was insane for more than a year preceding his death. This insanity of Abraham Gridley was conclusively proven at the trial by his son, Julius Gridley, and by Dr. Charles H. Nichols, the chief medical officer of the Bloomingdale Insane Asylum, where he was confined

from March until November, 1850, when he died. 9
(*Printed Record*, pp. 12, 13 and 14.)

At the close of the testimony the defendant's counsel requested the court to direct the jury to find a verdict for the defendant, which the court refused to do, and he excepted. Thereupon the plaintiff's counsel requested the court to direct the jury to find a verdict for the plaintiff, which the court did, to which direction the defendant's counsel also excepted.

10

Point I.

The answer of Fayette R. Gridley to the question whether any of his uncles had been afflicted with insanity was clearly untrue in fact.

It was erroneously held by the learned judge at the trial that the question only had reference to 11
hereditary insanity. Such construction does violence to the obvious and natural meaning of the words used. The applicant is asked whether his parents, uncles, aunts, brothers or sisters, have ever been afflicted with certain specifically enumerated diseases, which are ordinarily classed as hereditary diseases, but without using the word "hereditary" in connection therewith; and then, to cover other not specifically enumerated diseases of an hereditary character, the words are added "or any other hereditary disease." The word hereditary had only 12
this meaning in the question that it classified the previously mentioned specific diseases as of that nature, but it did not narrow the question; the applicant was clearly bound to state in his answer every case of actual consumption, scrofula, insanity, epilepsy, and disease of the heart with which any of his enumerated relatives had been afflicted, without reference to the fact whether such disease had in fact been inherited or not.

13 *The answer of the applicant in this case shows conclusively that he so understood the question*, for he gives one *exception* to his "No," which by his own description was a case of a temporary, and not an hereditary character. The utmost that could be claimed for the learned judge's forced and peculiar construction of the question would be that it was possibly susceptible of it, and that the applicant *might* have so understood it; but when the applicant's own answer clearly discloses that he did not
14 in fact so understand the question, such excuse for the falsity of his answer can certainly not avail.

Since the trial of this case two similar cases have occurred in the State of New York, and they are the only ones that I have been able to find.

In *Peasley* v. *Safety Deposit Life Insurance Co.*, 15 Hun., p. 227, decided in the General Term of the Fourth Department in October Term, 1878, the court held, that where the applicant had, in answer to the same question given an unqualified
15 "No," and where at the trial it appeared that his mother had been, on three several occasions, afflicted with insanity, the question of fact should have been left to the jury to determine whether such insanity was or was not hereditary, and that the judge below had erroneously dismissed the complaint, because the question was susceptible of the construction that only hereditary insanity was inquired about, and that the applicant's answer might, therefore, be taken as applicable to such
16 construction of the question, according to the well-established rule that, when the words are without violence, susceptible of two interpretations, that which sustains the claim must in preference be adopted.

I have no quarrel with this decision, unless it be that it is going very far to say that this question is, without violence, susceptible of the interpretation contended for. *As already stated, the answer of Fayette R. Gridley conclusively proves that he did*

not understand the question as being confined to hereditary insanity only; his answer admits that the question had reference to every kind of insanity. 17

Consequently, when the plaintiff in error proved that his uncle, Abraham Gridley, had, in fact, been insane, it was established beyond doubt or cavil that his answer was untrue in fact.

In *Newton* v. *Mutual Benefit Life Insurance Co.*, 15 Hun., p. 595, decided in the General Term of the Third Department in November Term, 1878, 18 the court was divided in its decision. The majority opinion held that the evidence of insanity was of an improper character, and should have been excluded at the trial, and did not, therefore, tend to prove it; and that, at all events, it should have been left to the jury to decide whether the person did not die from brain disease caused by a hurt, and had not been inflicted with insanity. BOCKES, *J.*, dissenting from the other two judges, sustained the views of the Court below, which had 19 dismissed the complaint, because the evidence established clearly the insanity of the father of the applicant, and the unqualified answer of the applicant, "No," to the question under consideration, was not true. He thus disposes of the view that only hereditary insanity was inquired of. "Now, insanity, epilepsy, disease of the heart and scrofula are held to be of the class of diseases known as hereditary, and the question was, did he die of or had been afflicted with insanity * * * * or other hereditary disease? The question was 20 not, in its full scope and meaning, did he die of, or had he been afflicted with, *hereditary* insanity; but did he die of, or had he been afflicted with insanity, or other hereditary disease? The question was answered untruthfully according to its fair import."

These two cases are therefore of no avail to sustain the judgment; at most they can only be held

as sustaining the view that where the answer of the applicant to the question under consideration is an unqualified negative, it will not be improper to assume that he supposed that the question was confined to hereditary insanity. As Fayette R. Gridley's answer, however, shows that he did not understand the question as being confined to cases of hereditary insanity only, it is idle to say that he might have understood it differently. To make his answer truthful, as he himself understood the question, and according to its obvious and natural import, he should have added another exception to that of his insane brother, namely, that of his insane uncle. The evidence established conclusively that Abraham Gridley, the applicant's uncle, was afflicted with insanity, and that therefore his answer was untrue in fact.

Point II.

The Court below erred in refusing to direct the jury to find a verdict for the defendant.

1. The policy of insurance was not only made "in consideration of the representations made in the application therefor," but it contained also the following express provision: "*If any of the statements or declarations in the application for this policy, and upon the faith of which it is issued, shall be found in any material respect untrue, * * * * then this policy shall be null and void;*" and the application states that the "*answers form the basis of the contract,*" and that "any untrue or fraudulent answers * * * * material to the risk * * * * shall vitiate the policy."

These statements have all the elements of a warranty.

May on Insuranre, §§ 156, 158 and 159.

But whether considered as a warranty or not, 25
or as representations or not, whenever the "statements and declarations" made in the application are in any material respect untrue, the policy is void. Nothing can be plainer than that.

Jeffries v. *Life Insurance Co.*, 22 Wallace, 47.

2. That the omission to state the insanity of the uncle was material to the risk, or, in the language of the policy itself, made the statement in the application "in a material respect untrue," hardly 26
needs argument.

The very fact that the question was asked whether the person's uncles had been afflicted with insanity showed that the answer was material.

Jeffries v. *Life Insurance Co.*, above cited.
Anderson v. *Fitzgerald*, 4 House of Lords Cases, 483.

If Fayette R. Gridly had truly answered that, besides his brother, who had been insane and died by 27
suicide, his uncle, Abraham Gridly, had also been insane and died so, the case would have been an entirely different one from that which he presented to the company for insurance, and the untruth was certainly material.

Jeffries v. *Life Insurance Co.*, 22 Wallace, p. 56.

3. Nor will it make any difference whether the applicant knew that his answer was untrue or not. The condition of the policy is that, if any state- 28
ment or declaration in the application be found in any material respect *untrue*, the policy shall be void. If Fayette R. Gridley did not know of the insanity of his uncle Abraham, his answer is not the less untrue. If he was not certain, he should have qualified his answer. It was precisely the same as if he had been asked the direct question: "Was your uncle Abraham Gridley afflicted with insanity?" and he had answered "No." The answer

29 would have been untrue, just as the answer which he gave was untrue, and such untruth avoids the policy.

Barteau vs. Phoenix M. L. Ins. Co. 8 authorities there cited. 67 N. Y. 595.

Point III.

Even if the court below did not err in holding that the question in the application only inquired of cases of hereditary insanity; still it erred in
30 *directing the jury to find for the plaintiff.*

1. There was not only no evidence to show that the insanity of Abraham Gridley was not hereditary, but it proved rather the contrary. It showed that Abraham Gridley, then agent of the Auburn State Prison, became insane in 1849, became well again, and then relapsed into insanity while a clerk at Sing Sing in the spring of 1850, when he was confined in the Bloomingdale Insane Asylum, where he died in November of that year; his insanity
31 was probably caused by overwork and bodily ill-health; while in the asylum he suffered from dyspepsia, ulceration of the bowels and hydrocele, which affections were chronic; "and the connection between the bodily diseases from which he suffered and the insane delusions rendered it highly probable that his ill-health was, in part at least, the cause of his insanity." (*Printed record*, pp. 12, 13 and 14.)

Insanity is hereditary, when certain bodily infirmities which produce it are hereditary, and the bodily
32 ailments which are given as partly the cause of the insanity of this patient are certainly not of a nature to preclude the idea of having been inherited. Besides, they are only mentioned as in part the probable cause. Which of all such ailments that human flesh is heir to, are really inherited, or wholly or partly so, is, I presume, still a mystery unsolved by our wit; and if a court or jury should be called upon to decide such a question, they must look to something else than merely the nature of the disease.

While there is a total absence of any proof that these diseases of the body which were the cause of this insanity were not inherited, the fact that a nephew of this insane man also became insane would certainly warrant the conclusion that insanity ran in the family, was hereditary. The weight of evidence in the case I respectfully insist, shows that Abraham Gridley's insanity was hereditary. 33

2. At all events, as the case stood, even if the learned judge below was right in his construction of the question and answer under consideration, *yet he certainly erred in taking the case away from the jury, and, upon the plaintiff's request, instructing them to render a verdict in her favor*, upon the assumption that Abraham Gridley's insanity was not hereditary. That was a question of fact which the jury alone had a right to decide. The learned judge had no right to take that question into his own hands. 34

I respectfully submit that for these errors the judgment below should be reversed and a new trial granted. 35

EDWARD SALOMON,
Attorney for Plaintiff in Error.

36

SUPREME COURT, U.S.
FILED
MAR 10 1886
D. W. MIDDLETON, Clerk.

Supreme Court of the United States.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Plaintiff in Error,

against

MARY L. GRIDLEY,

Defendant in Error.

Brief for Defendant in Error.

SEWELL & PIERCE,
Attorneys for Defendant in Error,
No. 206 Broadway, N. Y.

ROBERT SEWELL,
Of Counsel.

Supreme Court

OF THE UNITED STATES.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error, *vs.* MARY L. GRIDLEY, Defendant in Error.	No. 107.

Brief of Counsel for the Defendant in Error.

STATEMENT OF THE CASE.

This is a writ of error, issued to the Circuit Court of the United States for the Eastern District of New York; and it brings up the record of an action tried in that court before the Hon. Charles L. Benedict and a jury, in which action Mary L. Gridley, the plaintiff, recovered a judgment against the Northwestern Mutual Life Insurance Company, the defendant, for the sum of $10,643.36, on the 3d of July, 1877. The action was brought upon a policy of insurance in the sum of ten thousand dollars upon the life of Fayette R. Gridley, who resided at St. Paul, Minnesota, at the time of the issue of the policy, the same being for the benefit of Mary L. Gridley, his wife, the plaintiff below. The policy was dated the 31st of August, 1871, and will be found on page 11 of the transcript of the record. It was issued in consideration of a quarterly premium, and of the continuance of the payment of the same, and in consideration of a certain application for insurance, containing questions propounded to the insured by the company, and answers made by the insured to such questions. This application will be found at pages 8, 9 and 10 of the record.

Upon the trial the defendant below *claimed* the affirmative of the issues formed by its answer, which will be found on pages 2, 3 and 5. The pleas here interposed are—first, a defense that one of the answers made to a question in such application was untrue in a material respect, to wit, that one Abram Gridley, an uncle of the insured, became and was insane for a long period of time, &c.; and the second plea, interposed on information and belief, was that the insured did not come to his death by natural causes, but died in consequence of the act of the insured in destroying his own life for the purpose of defrauding the defendant. This was virtually withdrawn, as not a particle of proof was offered to support it. The third, a supplemental defense, claimed, by way of set-off, four several promissory notes of the assured, which were, on the trial, duly allowed with the consent of the defendant in error.

The Court awarded to the defendant below, the affirmative of the issues thus raised upon the pleadings, and the defendant below gave evidence in support of its first plea by introducing the policy and the application, and evidence of the fact that one Abram Gridley, an uncle of the insured, was insane; but they gave no evidence whatever to prove that the insanity was *hereditary* in its nature, or that the insured, at the time of answering the question, had any *knowledge* that his uncle ever had been insane, or of the *materiality* of the question.

Upon the conclusion of the defendant's evidence, a motion was made by the plaintiff below to instruct the jury to return a verdict for the plaintiff, which instruction was given, and the defendant below duly excepted thereto.

Afterwards the defendant below made a case, and upon that case made a motion for a new trial (see page 15), which was denied; whereupon the case was turned into a bill of exceptions and was annexed to the record herein, and is brought up by the writ of error for the consideration of this Court.

It is assigned for error here that the Court below erred in instructing the jury to return a verdict for the plaintiff under the circumstances, against the exception of the defendant below, and it is upon the validity of this exception, that the argument here turns.

Point I.

The first considerations which present themselves on the threshold of this argument, are the rules by which a policy of insurance, and the application on which it is based, are to be construed. As a general proposition, there can be no doubt, but that the two papers are to be taken together, if not as one instrument, yet as parts of a contract so intimately dependent upon each other as to be practically one.

Where the answers to the questions propounded in the application are not declared in either paper to be warranties, yet where the policy is expressed to have been issued and accepted upon the express condition, that the statements contained in the answers are in all respects true, these have been held as warranties of their truth, *within* the knowledge of the applicant.

Jeffries *v.* Life Ins. Co., 22 Wall., 47.

"But where the policy does not distinctly identify and refer "to the written application, and make it a part of the policy, "in view of the established rule that warranties are not to be "created or extended by construction, the doctrines of the later "and best considered cases hold that the statements in the ap- "plication are *representations* and not warranties."

(*per* Dillon, *J.*, in) Conover *v.* Mass. Mutual Life, 4 Big., p. 188 (*U. S. C. Ct., Nov.*, 1874).
(*quoting*) Campbell *v.* New England, &c., Ins. Co., 98 Mass., 381.
(*followed in*) Price *v.* Phenix Ins. Co., 17 Minn., 497.

Although the policy, the question of the validity of which is before the Court, declares the *representations* made in the application to be a part of its consideration (p. 11, l. 5–6), and at page 12 (l. 6–7), interjects the clause, that it was issued upon the faith of the statements or declarations in the application made by the assured, yet the efficient limitation upon the right of the company to treat the policy as a nullity, is thereto annexed and expressed to be solely on the ground, that the statements should be found to be untrue in any *material respect.*

If, then, the representations of the applicant are to be treated substantially as warranties, these can only be regarded as such,

as to the truth of the statements made by the insured *within* his knowledge, and of matters in themselves of *absolutely material relation* to the subject matter of the insurance.

The answers to the questions were given in 1871, and the policy was then issued. The defendant in error has faithfully complied with the terms of the policy for six years, has paid the quarterly premium, and has relied upon the company to perform its part of the contract when the event occurred, which, by the provisions of the contract, ended the liability of the defendant in error to pay premiums, and fixed the liability of the company to pay the principal sum.

The contract was made by the company. All its provisions were placed in it by the company for its protection, and legal acumen and the art of precise expression were exhausted in drafting it. The answers made by the insured, upon the faith of which the contract was issued, have been in possession of the company ever since they were made, but the company made no effort to ascertain their truth or falsity while it was the regular recipient of a yearly income, paid in the belief of the binding nature of the contract. It did not make any attempt to verify or disprove the truth of the answers until the death of the insured warned it, that the season of profit to it on the contract was over, and that the time of payment by it had arrived, unless ingenuity could devise some excuse for refusing to pay.

Under these circumstances it cannot be doubted but that the rule of construction should be the **liberal** one in favor of the insured, and the **strict** one against the company.

Especially is this so, where the terminology of the contract points either to a misleading or ambiguous construction.

1. Where the language used in a policy may be understood in more senses than one, it is to be understood in the sense, in which the insurer had reason to suppose, that it was understood by the insured.

   Hoffman *v.* Ætna Life, 32 N. Y., 414.
   Catlin *v.* Springfield Fire, 1 Sumn., 441.
   McAllister *v.* New England Mutual, 101 Mass., 855.
   Kentucky Mutual *v.* Jenks, 5 Ind., 103.

2. Conditions and provisos must be strictly construed against the insurers, because they have for their object to limit the scope

and defeat the purpose of the principal contract, and as the insurer prepares the contract, and furnishes the language used, any ambiguity in the contract must be taken most strongly against him.

Fowkes *v.* M. & L. Life, 3 Best. & S., 917.
Dilleber *v.* Home Life, 69 N. Y., 256.

Moreover, the contract was not as stringent as that usual in policies of life insurance. It contained no provision that the answers should be "*absolutely true*," but that they should be deemed to be "the applicant's own *fair and true* answers" (page 10, 1st line after question No. 21); these conjoined terms expressive of the quality which the answers should possess, being convertible into the equivalent expression "fairly true."

So, properly interpreted, the question of the materiality of the answers is not eliminated from the controversy, nor removed from the consideration of the Court or jury, as in

Jeffries *v.* Life Ins. Co., 22 Wall., 47.
Ætna Life Ins. Co. *v.* France, 1 Otto, 510.

It was held, in a *per curiam* opinion by the N. Y. Court of Appeals, that "a company cannot be permitted in the same "papers to say to the assured, to induce him to enter into the "contract, that nothing but fraud or *intentional* misstatements "shall avoid his policy, &c., and when the claim for payment "is presented to set up as a defense a merely technical breach of "warranty in reference to some trivial matter."

Fitch *v.* American Popular Life Ins. Co., 59 N. Y., p. 572.

Neither do the subsequent words in the third line of the contract now under consideration (quoted above from page 10), "untrue or fraudulent answers," modify the interpretation just given. As synonomous with "false or fraudulent," even if the latter term be in some instances variant from the former, and leave the terms "untrue or false" with a distinctive meaning, available as a legal defense in some instances, these, as defining the measure of truth intended by the contract, are referable to the former words "fairly true;" come within the honest intention of the applicant, and still leave the *onus* on the insurer to show that the answers were "knowingly and intentionally untrue."

Foot *v.* Ætna Life Ins. Co., 61 N. Y., pp. 576-7.

"A policy is not vitiated, although the representations are not strictly true, if the applicant answered the question truthfully as he understood it," &c.

Higbie, Ex., *v.* Guardian Mutual Life Ins. Co., 53 N. Y., 603.
Mutual Life Ins. Co. of N. Y. *v.* Wager, 27 Barb., pp. 365-6.

Point II.

The allegations of the complaint being already admitted, and the defense interposed being affirmative, to wit, breach of warranty and death by a cause not exempted by the policy, the burden of proving the facts set up in the defense lay upon the plaintiff in error. It claimed and had the affirmative on the trial, and it was bound to make out its case by evidence, its whole defense that is, all the facts constituting the basis of the plea; the burden was not shifted to the defendant in error, by proof of some of the facts upon which the defense rested.

This was authoritatively decided in a recent case under revision in this Court where, though the insurer had *not voluntarily* assumed the affirmative, but simply on the ground of the superior knowledge or control of proof within access to the insurer, it was held that: "If the insurer knows or believes any of the statements to be false, it is no hardship that he shall furnish the evidence."

Piedmont Life In. Co. *v.* Ewing. 2 Otto, pp 378-9

Point III.

What proof was it necessary to give, to sustain the issues raised on its first line of defense, that the answer to the tenth question was false?

The question and answers are as follows:

"Question. Have the person's parents, uncles, aunts, brothers or sisters been afflicted with consumption, scrofula, insanity,

epilepsy, disease of the heart, or any other **hereditary** disease?

"Answer. No, except one brother temporarily insane six years since; causes, domestic and financial trouble, followed by hard drinking and excessive use of opium and morphine; recovery followed reformed habits; no **hereditary** taint of any kind in family, on either side of house, to **my knowledge.**" (See page 9).

It will be noticed here that the words "to my knowledge" conclude the answer to the entire question, and presumably qualify the entire answer. It was necessary therefore for the plaintiff in error, the defendant below, to prove upon the trial of this action that some one of the relatives of the insured mentioned in the question were afflicted with *hereditary insanity to the knowledge of the insured;* otherwise the answer could not be said to be knowingly false, or a fairly untrue statement.

It will appear that the proof fell far short of this. It only went to show that the uncle of the insured was insane before he died, but it is absolutely silent on the question of knowledge of the insured of such insanity.

If the answer made by the defendant to the question propounded was not sufficiently full, and if the company did not desire to be bound by the limitations conveyed in the words "to my knowledge," it need not have issued the policy upon that application, or it might have sought to obtain a more explicit answer; but having accepted the answer as the basis upon which the policy of insurance was to be issued, it must prove the falsity of the answer in its entirety before it could make out the defense.

The full statement made by the insured in his answer regarding the temporary insanity of his brother is *prima facie* evidence of his willingness and intent to disclose all knowledge he possessed in regard to any disease of this general character in his family. There is no ground of inference whatever in this respect that his answer meditated a suppression of the truth.

The declaration of the insured was wholly as to matters within his own knowledge.

Point IV.

No evidence whatever was given as to the character of the disease. It is well known that insanity of an hereditary character exists as a disease, *sui generis*, and that but few cases of acute mania are outbursts of hereditary insanity. In fact it is clear from the evidence that it was not hereditary insanity with which Abraham Gridley was afflicted. It was proven by the witnesses of the defendant below to have been caused by overwork and bodily ill health (see page 14, fol. 32).

Here there was a clear failure of proof that the answer was false.

1. The distinction between the hereditary and acute form of insanity is not only clear from the terms, which qualify these species of the genus which embraces all varieties of mental disease, but exhibits marked difference in their producing causes. Acute or sub-acute mania find their origin, simply in general physical disturbances, casual or chronic, capable of evolving abnormal psychical manifestations. Hereditary insanity is evolved from a tendency to a mind diseased which is congenital, and is the outgrowth of heredity as its producing cause. All physiologists, as well as pathologists, have invariably recognized the clear and essential difference as to their exciting causes. One definition, as given by Morel and cited by the latest distinguished text writers on medical jurisprudence, may suffice:

"Hereditary insanity (*folie héréditaire*) has peculiar marks of its own—such as early or disproportionate mental activity accompanied by deficiency in higher moral power, the early development of instinctive impulses, tendency to cruelties, irritability, bizarre whims, fanciful caprices and business heedlessness—as among the accompaniments of the *approach of puberty*, &c."

1 Wharton and Stille's Med. Jurisp., § 363.

Not a particle of any of these symptoms are found in the testimony of the medical expert who was examined as a witness as to the form or peculiarities of the malady which afflicted the insured.

2. "The hereditary tendency to insanity lies in *other* affections of the nervous and bodily systems than phrenic disorder. Hysteria, epilepsy, alcoholism, paralysis and neuralgia are the most frightful breeders of insane manifestations in the progeny of those afflicted with these diseases. As prolific cause they take large precedence over simple insanity. Besides there is intercurrent power of transmission in such diseases—insanity in the parent may be epilepsy in the child, and *vice versa*. Nervous disease is a veritable Proteus, sometimes skipping generations, and sometimes displaying itself in several contemporaneous members of one family in the *most capricious and dissimilar forms*."

per Maudsley, cited *ut sup. cit.*, § 368.

Hence it is apparent that the physiology of the defense was at fault as well as its legal tactics. Had the pathology of insanity in its hereditary form been fully understood, the records of the Gridley family would have been put under requisition in tracing some epileptic, alcoholic or other taint in order to furnish the substratum of proof, that the affection of the deceased which was the proximate cause of his death was traceable to some *other* hereditary disease.

In this way only could the clear diagnosis of Dr. Nichols have been impugned or vitiated.

Point V.

The answer to the question No. 10 must be construed as stipulating only for its truth as within the knowledge of the insured.

It cannot be said that an answer is not fair and true which is not known to be untrue when given.

In a recent case in this Court, when the answers were qualified by the words at the bottom of the application, "the above are as near correct as I remember," it was held that this was but a stipulation for approximate accuracy, and not for absolute verity, and that the right to recover could not be defeated till some of the answers should be shown to be consciously false.

Ætna Life Insurance Co. *v.* France, 4 Otto, p. 556.

Point VI.

The warranty, if any, extends only to the truth of answers which are material.

If the policy had been silent on the subject, except so far as to state that it was issued upon the statements made in the application, and that such application was the basis of the contract, the absolute truth of all the statements might be warranted. But in this case the policy itself explains that this is not the intention of the parties. They did not mean that a mistake as to the fact that a relative had had some trivial disease would work a forfeiture, so they agreed that such a result should only follow a false answer about some material fact. In the words of the policy (page 12): "If any of the statements or declarations in the application for this policy, and upon the faith of which it is issued, shall be found in any **material respect** untrue, then and in every such case this policy shall be null and void."

Now, while materiality is a question of fact to be passed upon, it was in this case wholly *removed* from the consideration of the Court and jury, for the further and potent cause that no evidence was given on the subject.

Point VII.

The judgment of the Court below should be affirmed.

ROBERT SEWELL,
Of Counsel for Defendant in Error.